

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 515 of 2007

Date of Decision: 18.04.2007

Dharinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sukhdev S. Kanwal, Advocate,
for the petitioner.

Mr. M.P. Goswami, DAG, Punjab,
for respondent No. 1.

Mr. Vikas Chatrath, Advocate,
for respondent Nos. 2 to 4.

None for respondent No. 5.

JUDGMENT

M.M. KUMAR, J. (Oral)

This petition filed under Article 226 of the Constitution prays for setting aside the transfer order dated 8/11.12.2006 (P-5), posting respondent No. 5 at Mukerian by transferring him from Rajpura (Patiala). A further prayer has been made to direct official

respondents to allow the petitioner to discharge his duties at his present place of posting.

On 14.3.2007, we had passed a detailed order, which reads as under:-

“ The order dated 11.12.2006 passed by Director, Punjab State Electricity Board, Patiala is the subject-matter of challenge in this petition. The aforementioned order inter alia directed the transfer of respondent No.5-Pritam Dass, Divisional Head Draftsman from Rajpur to Mukerian. The order further states that the transfer of Pritam Dass- respondent No.5 is against the vacant post and is in 'personal interest'. The grievance made by the petitioner is that once Pritam Dass was ordered to be transferred against the vacant post in 'personal interest' then there was no opportunity to relieve him from the post of Divisional Head Draftsman occupied by him at Mukerian, (Distt. Hoshiarpur) as has been done by the concerned Superintending Engineer on 29.12.2006. The petitioner was relieved without any order to that effect by the Superintending Engineer concerned. He was relieved without any order of the Director, PSEB, Patiala because the transfer of Pritam Dass- respondent No.5 was against the vacant post. The petitioner, thereafter, was not given any posting and was kept on tenter-hooks nor any salary

has been paid to him. It is only in order dated 9.2.2007 (R-4/3) that the petitioner has been given posting at Kapurthala against a vacant post where he has not joined on account of the pendency of this petition which he has filed on 12.1.2007.

After hearing learned counsel, we are prima facie of the view that there was no warrant in relieving the petitioner on 29.11.2006 in pursuance to transfer order of one Pritam Dass (Annexure P.5) because Pritam Dass – respondent No.5 was transferred against a vacant post in his personal interest. It is apparent that no public interest was involved and if the post was not vacant then the proper course for the concerned Superintending Engineer was to seek clarification from the Director instead of assuming the authority by reading the order that respondent No.5 has been transferred vice the petitioner. The relieving of the petitioner is wholly unwarranted and is not sustainable in the eyes of law.

Mr. Vikas Chatrath, learned counsel for the respondents requests for some time to seek instructions with regard to the further course of action to be adopted by respondent- Board to avoid quashing of the order.

For the time being, the petitioner is directed to report for duty at his transferred place at Kapurthala in pursuance to Annexure R4/3.

List again on 23.3.2007.

A copy of the order be given dasti on payment of usual charges.”

In pursuance to our order, learned counsel for the petitioner has stated that the petitioner has joined at Kapurthala on 22.3.2007. On 23.3.2007, learned counsel for respondent Nos. 2 to 4 had requested for filing of an additional affidavit, which has been filed today in the Court.

After hearing learned counsel for the parties we are of the considered view that there was no transfer order in respect of the petitioner when he was illegally relieved on 29.12.2006, by the Superintending Engineer, in order to enable the joining of Shri Pritam Dass-respondent No. 5 at Mukerian. Accordingly, he was not aware where to join till the time an order on 9.2.2007 (R-4/3) was passed asking him to join at Kapurthala, as has been noticed in our order dated 14.3.2007 (supra). However, the fact remains that the petitioner has now joined at Kapurthala on 22.3.2007. The dispute which is required to be settled is as to whether the petitioner is entitled to get salary from 29.12.2006 to 22.3.2007. It is admitted position that the salary from 29.12.2006 to 9.2.2007 has been paid but subsequent thereto the salary of the petitioner has not been given. It is undisputed that the petitioner has filed the instant petition on 12.1.2007 and during the pendency of the petition an order was passed on 9.2.2007 posting him at Kapurthala, where he joined on 22.3.2007 in terms of direction of this Court dated 14.3.2007. The

conduct of the official respondents in relieving the petitioner on 29.12.2006 without any specific order transferring him, is absolutely unwarranted and illegal. Once respondent No. 5 was posted against a vacant post and there was no vacant post available at Mukerian then the proper course for the Superintending Engineer to follow was to either seek advice of the office or to refuse joining of respondent No. 5 as there was no vacant post nor there was any order transferring the petitioner from Mukerian to some other place. On account of the hasty action of the Superintending Engineer, an ugly situation has arisen resulting into filing of the instant petition. Therefore, we hold that the petitioner is entitled to salary from 9.2.2007 to 22.3.2007 and all other consequential benefits. The salary of the petitioner shall be paid within a period of two weeks from the date a certified copy of this order is received by the respondents. The petitioner shall also be entitled to costs, which we quantify at Rs. 10,000/-.

The petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

April 18, 2007
Pkapoor